

Secretary of State for Transport
c/o Transport Infrastructure Planning Unit
Department of Transport
Great Minster House
33 Horseferry Road
London
SW1P 4DR

Your Ref TWA/21/APP/01/OBJ/36

Our Ref IPP-111

Tuesday 6th July 2021

BY EMAIL ONLY transportinfrastructure@dft.gov.uk

Dear Sirs

TRANSPORT AND WORKS ACT 1992

**THE PROPOSED NETWORK RAIL (HUDDERSFIELD TO WESTTOWN (DEWSBURY)) IMPROVEMENTS ORDER
("The Order")**

Further to your letter dated 18th May 2021, stating that the Secretary of State has decided to hold a public inquiry on this application.

As set out in our letter of objection to the Order dated 17th May 2021 (our objection letter), we consider that our objections and concerns to the effects of the proposals on our statutory undertaking are capable of being addressed by the Applicant prior to the public inquiry. However, in the event that the issues raised in our objection letter are not resolved satisfactorily then the Trust confirms that it would wish to raise our concerns at the public inquiry.

Statement of Case

The Trust's case has been set out at length in our objection letter dated 17th May 2021 and we ask that that objection letter is taken as our Statement of Case. However, to assist the Inquiry, we provide the following additions and clarification on certain aspects contained within our original objection letter:

1) Compulsory Purchase of Trust land

1.0 There is a drafting error contained within Page 3, second paragraph of our objection letter dated 17th May 2021, which omitted a sentence. The paragraph should have read [additional text in **bold**]:

1.1 *The Trust is a statutory undertaker which has specific duties to protect the waterways. Accordingly, we have a duty to resist the use of compulsory purchase powers which may negatively affect our land or undertakings. **Alternatively, should any compulsory acquisition powers over the Trust's land be retained in the Order, such acquisition should only be with the consent of the Trust.** The protective provisions as currently drafted do not provide for this, although the Promoter has accepted the principle in past Orders.*

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- 1.2 We consider that the Trust's consent should be required prior to compulsory acquisition of our land or undertakings. This point relates to part 5 (39) of the protective provisions for the Trust as drafted within the Order. We consider that the wording of the provision should be amended as set out below:
- 1.3 *'Network Rail must not under the powers conferred by this Order acquire compulsorily any land of the Trust or any easement or other right over such land, or use any such land, unless such acquisition or use is with the consent of the Trust.'*
- 1.4 We would ask that the Trust's suggested version of Protective Provisions sent to the Applicant on 15th March 2021 (and appended to this letter), should be read as including this provision at paragraph 39.
- 1.5 This would accord with the wording within the Network Rail (Ordsall Chord) Order 2015 Protective Provisions for the Trust (Part 5 43(1)) which related to the Manchester, Bolton & Bury Canal.
- 1.6 As well as being preceded in other Network Rail Transport and Works Act Orders, it would also be entirely reasonable and logical that any permanent acquisition or temporary occupation of land forming part of our statutory undertaking requires the consent of the Trust. Particularly as Network Rail accept that the matters that follow within the draft Order protective provisions, as set out at paragraph 40 onwards, all require the consent of the Trust.

2) DCLG Guidance

- 2.0 Page 3, first paragraph of our objection letter makes reference to the DCLG's Guidance on the Planning Act 2008 (as amended September 2013), regarding compulsory purchase under the DCO process. The Trust considers as the works would be authorised by a Transport and Works Act Order that it would be more appropriate to refer instead to the second and third paragraphs of the **Government's General** guidance on Compulsory Purchase Process and the Criche Down Rules dated July 2019, which state:

"The confirming authority will expect the acquiring authority to demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the Order by agreement. Where acquiring authorities decide to/arrange to acquire land by agreement, they will pay compensation as if it had been compulsorily purchased, unless the land was already on offer on the open market."

"Compulsory purchase is intended as a last resort to secure the assembly of all the land needed for the implementation of projects."

- 2.1 The Trust's point remains that the Applicant has not followed this guidance.

3) Code of Practice

- 3.0 Page 3, fourth paragraph of our letter of objection relates to our concern that the compulsory acquisition of rights would bypass the need for the works to abide by the Code of Practice. The Trust would require that any works on or over our land should be carried out in accordance with the Code of Practice, regardless of the compulsory acquisition of any rights or the land. The Code of Practice includes dedicated provisions based on many years of experience to specifically address the risks and issues that arise in relation to works in or adjacent to the canal network. The Code of Practice provides relevant procedures and protections for the canal infrastructure, **which Network Rail's COCP Part A** (or Part B based on the summary provided at paragraph 1.2.5 of Appendix 2-1 of the Environmental Statement), simply does not adequately address. This includes provisions for bridges over our waterways; service crossings over our waterways; diversionary routes; use of cofferdams; matters relating to canal linings; water discharge to canals and requirements for this; site investigation; scaffolding on our land; vehicles and plant on towpaths; licenses and permits for workboats; vibration limits for our waterways; and matters relating to avoiding loading on the canal infrastructure and specific requirements in relation to

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this to avoid damaging our 200 year old infrastructure, which is not built to modern engineering standards. This list could go on.

- 3.1 If the Applicant does not accept the use of the Trust's Code of Practice, it must bear the risks of ensuring that their Code of Construction Practice Part A and B are sufficiently robust to cater for working on, over and adjacent to our 200 year old waterways and the nuances of such infrastructure, including the engineering, environmental, heritage, health & safety considerations without causing damage or deterioration to the network and interfering with the Trust's ability to carry out its statutory undertaking. Any works or site investigations must also have full regard to existing services, cables and apparatus which are often carried in our towpath and/or over our assets. These matters are set out in more detail in the Code of Practice Part One and Two, which should be read in conjunction with each other along with the indemnity, licenses and permits as set out within Part Three of the Code of Practice.
- 4) Article 25
- 4.0 The draft Order at article 25 (1) (a) refers to the temporary interference of the waterway and includes the potential use of cofferdams. Cofferdams are covered in more detail within Part One of the Trust's Code of Practice, including the impact the reduction in water levels can have on aquatic habitats and species. As set out within the Code of Practice the Trust are the largest owner of fishing rights and fish stocks in the UK. In the event that the Applicant wishes to lower water levels or empty sections of the waterway associated with the works, they would need to have regard to the requirements, permissions and consents as set out within the Trust's Code of Practice Part One, in particular pages 16, 23-24. Such measures (or any equivalent) are, again, not found in the Applicant's CoCP.
- 4.1 In relation to Article 25 and the temporary closure of our waterways. Our objection letter sets out that *"any temporary closures would need to be notified to the Trust by the beginning of the month of May prior to the temporary closure."* This sentence should be corrected to read **"any temporary closure would need to be notified to the Trust by the 1st March if a closure of the navigation is required within the upcoming winter stoppage season."**
- 4.2 Related to this matter, within the Applicant's letter to the Trust dated 16th June 2021, they set out some provisional closure dates relating to Work 9A, Work 15 and Work 21 which directly impact our waterways. Of these dates, the majority are not within our National Stoppage Season (November to March). Although indicative, given these works are not set to be undertaken until 2023-24, it is unclear why the works could not be programmed this far in advance to be within our National Stoppage Season. For example, the suggested closures in April, why can these not be programmed for March?
- 4.3 Furthermore, the Applicant's letter of 6th May implies the duration of Work 15 could be *"approx. 3.5 Years (relating to canal closure)"*. However, paragraph 2.1.4 of the 16 June letter from the Applicant, seems to have far more specific and much reduced timescales for elements of these works. Although the shorter timescales are welcome, it is not clear to the Trust which information is to be relied upon and why there is such a discrepancy between the two. It is also unclear whether further closures associated with other works and in addition to those listed in the 16 June letter, will be required and, if so, what the timing and duration of such closures would be.
- 5) Side Agreement
- 5.0 Page 7, second paragraph of our letter of objection, the Trust previously set out that we considered that matters should primarily be addressed in the Order and Protective Provisions rather than a Side Agreement. However, following receipt of the letter from the Applicant dated 17th June 2021, a number of commitments have been offered to the Trust. Although those commitments offered are still under review and the Trust will respond to Network Rail separately on them, the Trust's initial view is that they

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do not go far enough to address the Trust's concerns. However, in principle, the Trust considers that some of our concerns could most appropriately be dealt with via a suitably worded Side Agreement. However, at present and in the absence of an acceptably worded Side Agreement the Trust maintains its objection. We will update the Secretary of State in due course in relation to the progress made on the proposed Side Agreement.

6) Access rights

6.0 The table attached to the Applicant's letter to the Trust dated 6th May 2021 as referenced within our objection letter under point (1), has been further updated and added to in the reissued table attached to the Applicant's letter to the Trust dated 17th June 2021. However, the details still do not provide the clear explanation sought by the Trust for each land parcel, especially in terms of temporary possessions and the implications this would have for the Trusts access rights. It is still not clear if the temporary rights sought are exclusive rights solely for the Applicant or shared rights which would enable the Trust continued access for operational and maintenance purposes, as well as continued access for our users and customers.

7) Permanent and Temporary Acquisition

7.0 Based on the submitted plans and explanations given by the Applicant in the table provided on 6th May 2021, the Trust questions the extent of our land being acquired, both temporarily and permanently, by the Applicant and consider that this should be reviewed, land take reduced or greater justification provided **given the effects on the Trust's undertaking in each case**. These effects are detailed against each parcel of land as follows:

7.1 Plot 11-054 – the land is to be acquired permanently for the Bradley Power Supply Point (PSP) and a Road Rail Access Point, with a gated access from the B6118 Colne Bridge Road. The plot is also to be used as a temporary compound for the works, including the Huddersfield Broad Canal (HBC) (MVL3/108S) underbridge. The Trust has operational and maintenance access requirements to the offside of the canal and listed Lock No.2 via this land parcel which would need to be retained throughout for the Trust. The Trust also use this land for access and as a compound when replacing the lock gates (approximately every 25 years). The parcel of land is in very close proximity to/contains a lock by-wash (culverted overflow channel) which would need to be protected from structural loading along with the canal edge. **The Trust's ongoing access, ownership and rights over this lock by-wash would need to be clarified and agreed, given it runs under the land which the Applicant seeks to acquire.** Fishing rights also exist along this stretch of canal (towpath side) and these rights must not be interfered with through the permanent use of this site.

7.2 Plot 11-059 – this is a small area of land on the offside of the HBC adjacent to underbridge (MVL3/108S). The land would be taken permanently and has been included as part of the limits of deviation for Work No.9A. According to the Applicant this land would form part of the Yorkshire water sludge main diversion and safe walking route. The Trust query the extent of land acquisition here and the reason provided. It would appear based on the plans that if the sludge main diversion were to be on/over this land then it would likely be detached from the bridge structure contrary to the design parameters within the submission drawings. **Furthermore, the acquisition of the land and works would limit the Trust's access for inspection of the offside of the canal.** The works would also be in very close proximity to/contains a lock by-wash (culverted overflow channel) which would need to be protected from structural loading along with the canal edge. The structural integrity of the waterway infrastructure must be safeguarded and protected. **The Trust's ongoing access, ownership and rights over this lock by-wash would need to be clarified and agreed, given it runs under the land which the Applicant seeks to acquire.**

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- 7.3 Plot 11-061 – land to be acquired as part of the limits of deviation for Work No. 9A to the HBC underbridge (MVL3/108S). According to the Applicant this land would form part of the Yorkshire Water sludge main diversion and safe walking route. The land parcel includes the canal, offside and towpath, which the Applicant has advised would be solely at railway/structure level. The Trust query the extent of acquisition here and the reason provided. It would appear based on the plans that if the sludge main diversion were to be on/over this land then it would likely be detached from the bridge structure contrary to the design parameters within the submission drawings. The Trust would want to ensure that any structure over the canal must adhere to our airspace and headroom requirements, and must not impede our maintenance and operation of the waterway. Any temporary closure of the canal should ensure both the towpath and waterway remain open where reasonably practicable, in accordance with article 25(3).
- 7.4 Plot 11-062 - land to be acquired as part of the limit of deviation for Work No. 9A for HBC underbridge (MVL3/108S). The Trust would want to ensure that any structure over the canal must adhere to our airspace and headroom requirements and must not impede our maintenance and operation of the waterway. Any temporary closure of the canal should ensure both the towpath and waterway remain open where reasonably practicable, in accordance with article 25(3).
- 7.5 Plot 11-064 – according to the Applicant this land would be acquired as part of the limit of deviations for Work No. 9A. The Applicant is not currently anticipating any changes to the structure on that side of the railway. Any acquisition is at railway/structure level, not at canal level. The Trust would want to be consulted on any changes to the design of this structure. The Trust would want to ensure that any structure over the canal must adhere to our airspace and headroom requirements and must not impede our maintenance and operation of the waterway. Any temporary closure of the canal should ensure both the towpath and waterway remain open where reasonably practicable, in accordance with article 25(3).
- 7.6 Plot 23-020 - is a small parcel of land to the east of the existing viaduct crossing over the Calder & Hebble (C&H). According to the Applicant the land would be acquired as part of the existing railway corridor and fenced for security reasons. **It appears from the plot plan that this may sever the Trust's ownership here.** In addition, security fencing would likely limit our access to the offside of the canal for inspection and maintenance. We query the extent of the security fencing, which would be greater than existing, especially as the viaduct is to be decommissioned. A gated access would be required for the **Trust's maintenance purposes** or alternatively the security fencing should be installed solely on the Applicant's existing land.
- 7.7 Plot 23-026 and 23-029, 23-031 – the Applicant has advised that the land acquisition relates to railway level only (existing Network Rail land only). The Trust would need assurances that the waterway would be excluded. Temporary closure of the canal would be required at this location due to the viaduct works to the east. Any temporary closure of the canal should ensure both the towpath and waterway remain open where reasonably practicable, in accordance with article 25(3).
- 7.8 Plot 23-034 – the Applicant has advised that the land would be acquired as part of the limit of deviation for Work No. 15 and related to the land for the viaduct structure. The Trust would need assurances that the waterway would be excluded and that there would be no permanent impact on the ability to navigate the canal. Temporary closure of the canal required at this location due to the viaduct works. Any temporary closure of the canal should ensure both the towpath and waterway remain open where reasonably practicable, in accordance with article 25(3). Fishing rights also exist along this stretch of canal and these rights must not be interfered with wherever practicable.

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- 7.9 Plot 23-049 and plot 23-052 - according to the Applicant these parcels of land are required permanently relating to the new viaduct over the C&H (Work no.15), temporary use for construction of the new viaduct and the temporary bridge over the canal for construction access (Work no.21). The Trust query the extent of land acquisition here and the need to incorporate both the waterway and towpath for the full extent between Work no.15 and Work no.21. Both the temporary and permanent areas of acquisition should be reduced significantly. Any temporary closure of the canal should ensure both the towpath and waterway remain open where reasonably practicable, in accordance with article 25(3).
- 7.10 Plot 11-057 - according to the Applicant this is to be used as a temporary construction compound/laydown/construction area on land adjacent to the offside of Lock 2 on the HBC. The extent of land acquisition should be limited here, so it is not up to the edge of the listed lock, to avoid potential loading on the lock wall and damage to historic fabric. A stand-off should be provided. Similarly, a stand-off is required to the lock by-wash (overflow) here to avoiding loading and impacting its structural integrity. Safe, operational and maintenance access for the Trust to the offside of the canal and listed Lock No2 would need to be retained throughout. Access for boaters to be able to safely operate the locks and navigate the canal would also be needed. Any temporary closure of the canal should ensure the waterway remains open where reasonably practicable, in accordance with article 25(3).
- 7.11 Plot 11-058 - according to the Applicant this is to be used temporarily for access to HBC underbridge (MVL3/108S) and Yorkshire Sludge main diversion. We query the extent of land acquisition here and consider it should be reduced to exclude listed lock no.2, and the immediate lockside and area of adjacent towpath which are all set away from the bridge crossing and works. Temporary access over the listed lock here for or during construction would not be acceptable to the Trust. Safe, operational and maintenance access for the Trust to the offside of the canal and listed Lock No2 would need to be retained throughout. Access for boaters to be able to safely operate the locks and navigate the canal would also be needed. Any temporary closure of the canal should ensure both the towpath and waterway remain open where reasonably practicable, in accordance with article 25(3).
- 7.12 Plot 11-063 – according to the Applicant access is required here for the underbridge works to MVL3/108S. This would require scaffolding and potentially a crash deck dependent on bridge solution. The Applicant further advised, in the table within their letter of 6 May, that the works may *“be required to eat into embankment with sheet piles to move crane closer subject to site survey and subject to working platform design and detailed lifting plan”*. Sheet piling here could potentially damage the canal lining if not carried out correctly and any structural loading on the waterway edge would also need to be addressed. We have concerns over the stability of the canal/loading in relation to crane and any sheet piling works. Safe, operational and maintenance access to the canal and towpath for the Trust would be required throughout. Any temporary closure of the canal should ensure both the towpath and waterway remain open where reasonably practicable, in accordance with article 25(3).
- 7.13 Plot 13-013 - includes a section of the C&H towpath. The Applicant has advised that this is required due to possible culvert works to existing infrastructure for discharge to the canal (works to be defined as part of design development). The Applicant is seeking permanent rights for maintenance access. The Trust query the extent of the C&H towpath that has been included here for the culvert works, this should be reduced. The drainage details would need to be agreed with the Trust and any permanent rights must not interfere with our operation of the waterway.
- 7.14 Plot 16-030, 16-053, 16-065 and 16-066 - all have the potential for restricting access onto the towpath from Lowlands Road during the works and including the alteration works at the junction with Station Road. Lowlands Road doubles as the towpath here. The extent of the temporary land acquisition should be reduced to maintain a stand-off from the canal edge and retain a towpath for operational and

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maintenance purposes and our customers. There is potential for structural loading on the canal edge through HGV movements here. The Trust manages winter moorings here and access to these would be restricted during the works and Trust would be unable to rent these out for the duration of works. Any temporary closure of the canal should ensure both the towpath and waterway remain open where reasonably practicable, in accordance with article 25(3).

- 7.15 Plot 21-097 - according to the Applicant this land is required for the temporary works as part of a permanent overhead power line diversion above the canal at this location. We query the extent of land acquisition here which seems excessive for overhead power line works and the permanent rights sought. Any permanent rights must not interfere with the navigation of the waterway. The Trust also has a critical operational and maintenance access to the flood gate at New Top Cut here, our access is via plot 21-040 and 21-067 through the Calder Road Industrial Estate Access. Safe access must be retained throughout the works for the Trust. Any temporary closure of the canal should ensure both the towpath and waterway remain open where reasonably practicable, in accordance with article 25(3). There is an existing electricity pylon here which straddles both Trust ownership and a third-party. If this pylon is to be re-located, it should be sited wholly on Trust land or the other party's land. In any case, the power company have rights of access to the pylon over Bridge 19, Long End Cut and these will need to be maintained throughout. New electrified lines will lead to greater restrictions to recreational anglers. Where we have overhead powerlines we put up safety signs advising anglers not to fish within 30 meters of them.
- 7.16 Plot 21-104, 23-006, 23-009 and 23-011 - according to the Applicant these plots are required due to the temporary closure of the canal at this location due to the viaduct works to the east. We query the extent of land required here which is to the west of the existing viaduct and consider further justification should be provided. Any temporary closure of the canal should ensure both the towpath and waterway remain open where reasonably practicable, in accordance with article 25(3).
- 7.17 Plot 23-033 – the applicant has advised that temporary use of this land is required for construction of new viaduct. This includes “*scaffold, formwork, interface during sheet pile installation and lifting operations. Safety boat required for operatives working at height*”. Sheet piling here could potentially damage the canal lining if not carried out correctly and any structural loading on the waterway edge would also need to be addressed. We have concerns over the stability of the canal/loading in any sheet piling works. Licenses and permits may be required for any workboats and specific controls in terms of using these on our waterways. Safe, operational and maintenance access to the canal and towpath for the Trust would be required throughout. Any temporary closure of the canal should ensure both the towpath and waterway remain open where reasonably practicable, in accordance with article 25(3).
- 7.18 Plot 23-068 – the Applicant has advised that this temporary bridge (Work no.21) would operate for two-way traffic over the canal for construction access between the Sand & Gravel site and the Ravensthorpe Triangle. Access from the highway will be from Forge Lane. The applicant further advises that the canal will be navigable under the temporary bridge once the installation works are completed. The Trust would want to ensure that any structure over the canal must adhere to our airspace and headroom requirements and must not impede our maintenance and operation of the waterway. The temporary structure will need a mechanism/longstop date for its removal and at the Applicants expense to ensure it is not left there permanently. Any temporary rights for the airspace/land would also need to revert back to the Trust. The Trust also consider that the land would need to be returned and restored following the **removal of the temporary bridge by the Applicant and to the Trust's satisfaction.** Any temporary closure of the canal should ensure both the towpath and waterway remain open where reasonably practicable, in accordance with article 25(3).

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- 7.19 Plot 23-068a - according to the Applicant this plot is required for temporary access relating to the construction of the temporary bridge over the canal. We query the extent of land required here which seems excessive and consider further justification should be provided.
- 8) Vegetation clearance
- 8.0 Works No.2C, Work No.3, Work No.4, Work 9A and Work 15 all require the clearance of a significant number of established trees either associated with the works or the construction activities/compounds. The removal of these trees could adversely impact the stability of the canal infrastructure. Clear justification for entire woodland clearance should be provided by the Applicant, especially along the canal corridors. The Trust considers a minimum 10m buffer to the canal should be provided where no trees are felled. Any tree removal along the canal corridor would need to include the appropriate treatment of the roots of the felled trees, as these may be providing stability to the canal cuttings/embankments. Furthermore, where such felled trees are next to the canal the roots may already penetrate the canal lining. In such instances if trees are removed, the roots would shrink and may cause the canal to leak, which would be of significant concern to the Trust. This would need to be addressed by the Applicant.
- 8.1 In terms of replacement planting, unless otherwise specifically agreed by the Trust, all tree planting is to be kept a minimum of 5m from the **water's edge of the Canal** and 10m from any lock, bridge, sluice, weir, waterway wall or other structure forming part of the canal as such planting and tree growth could damage our waterway infrastructure and assets.
- 9) Structural Integrity of the Waterway Infrastructure
- 9.0 Works No.2C, Work No.3, Work No.4, Work No.9A, Work No.14, Work No.15 and Work No.21 or the associated construction activities/compounds could all potentially result in the structural loading of the waterway infrastructure. This would be totally unacceptable to the Trust. The stability of the towpath and canal must not be compromised as a result of any works. Construction work in close proximity to the canal has the potential to adversely affect the structural integrity of the canal. It is therefore essential that structural integrity is not put at risk as part of any works, including excavations or vibrations from plant or machinery which could, in the worst case scenario, result in the failure of the canal or supporting infrastructure.

If required, the Trust would provide evidence at Inquiry on the concerns raised above and in our objection letter to show the extent of the effects of the proposed scheme on **the Trust's land and infrastructure** and to demonstrate the need to limit the extent of interference with and provide more specific protections for the canal network and statutory undertaking than are currently provided for in the draft Order and supporting application documents.

10) List of documents to be referred to at the Inquiry

The following documents may be referred to in support of the Canal & River Trust's case (this is a non-exhaustive list):

Applicant's letter to the Trust dated 6th May 2021

Applicant's letter to the Trust dated 16th June 2021

Canal & River Trust Code of Practice Part One: General Information

<https://canalrivertrust.org.uk/refresh/media/thumbnail/35862-code-of-practice-2018-part-1-general-information.pdf>

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Canal & River Trust Code of Practice Part Two: Detailed Information

<https://canalrivertrust.org.uk/refresh/media/thumbnail/35863-code-of-practice-2018-part-2-detailed-information.pdf>

Canal & River Trust Code of Practice Part Three: Forms

<https://canalrivertrust.org.uk/refresh/media/thumbnail/35864-code-of-practice-2018-part-3-forms.pdf>

Canal & River Trust suggested draft protective provisions of 15th March 2021

The Trust is in discussion with the Applicant, and, depending on the outcome of those negotiations, the Trust may also wish to draw upon relevant evidence on any outstanding concerns from correspondence and agreed minutes with the Applicant from the past 18-24 months at the Inquiry.

The above comments are given without prejudice to any further matters which may be raised by the Trust at a later stage as more details emerge from discussions with the Applicant.

Please do not hesitate to contact me with any queries you may have.

Yours sincerely,



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<https://canalrivertrust.org.uk/specialist-teams/planning-and-design>

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